Jason M. Drangel (JD 7204)
jdrangel@ipcounselors.com
Ashly E. Sands (AS 7715)
asands@ipcounselors.com
Kerry B. Brownlee (KB 0823)
kbrownlee@ipcounselors.com
EPSTEIN DRANGEL LLP
60 East 42nd Street, Suite 2520
New York, NY 10165
Telephone: (212) 292-5390
Facsimile: (212) 292-5391
Attorneys for Plaintiff
Vandal-A Industries, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VANDAL-A INDUSTRIES, INC. *Plaintiff* v. FOOT LOCKER, INC. d/b/a FOOTACTION and CHAMPS SPORTS; FOOT LOCKER RETAIL, INC. d/b/a FOOTACTION and CHAMPS SPORTS; and H & C HEADWEAR INC. d/b/a KC CAPS and HEADSHOTS by KC CAPS *Defendants*	**COMPLAINT** 17: CIV 4318 **JURY TRIAL REQUESTED**

Plaintiff, Vandal-A Industries, Inc., a New York corporation, (hereinafter, "Plaintiff" or "Vandal-A") by and through its undersigned counsel, alleges as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement of a federally registered trademark in violation of §32 of the Lanham Act, 15 U.S.C. § 1114; counterfeiting of a federally registered trademark in violation of 15 U.S.C. §§ 1114(1)(a)-(b), 1116(d), and 1117(b)-(c); false

designation of origin and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a); and for related common law claims. Plaintiff seeks injunctive relief, an accounting, compensatory damages and/or statutory damages, treble damages, attorneys' fees and costs, and such other relief as the Court deems proper.

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as well as pursuant to 15 U.S.C. § 1121, as an action arising out of violations of the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; and pursuant to 28 U.S.C. §1338(b) as an action arising out of claims for false designation of origin and unfair competition. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a), as the claims asserted hereunder are so closely related to the federal claims brought in this action as to form part of the same case or controversy.

3. Personal jurisdiction exists over Defendants in this judicial district pursuant to N.Y. C.P.L.R. § 301, N.Y.C.P.L.R. § 302(a)(1), N.Y.C.P.L.R. § 302(a)(2) and/or N.Y.C.P.L.R. § 302(a)(3) because, upon information and belief, Defendants are incorporated in the State of New York and/or regularly conduct, transact and/or solicit business and/or contract to supply goods (including the Unauthorized Products, as defined below) in New York and in this judicial district; have committed tortious acts within New York and in this judicial district, as well as without the State of New York; derive substantial revenue from their business transactions in New York and in this judicial district; otherwise avail themselves of the privileges and protections of the laws of the State of New York such that this Court's assertion of jurisdiction over Defendants does not offend traditional notions of fair play and due process; and/or Defendants' infringing actions have caused injury to Plaintiff in New York and in this

judicial district such that Defendants should reasonably expect such actions to have consequences in New York and in this judicial district.

4. Venue is proper, *inter alia*, pursuant to 28 U.S.C. § 1391 because, upon information and belief, Defendants conduct, transact and/or solicit business in this judicial district, a substantial part of the events or omissions giving rise to the counts asserted herein occurred in this judicial district, and harm to Plaintiff has occurred in this judicial district.

THE PARTIES

5. Vandal-A is a New York corporation with an address of c/o Bellizio + Igel PLLC, One Grand Central Place, 305 Madison Avenue, 40th Floor, New York, New York 10165.

6. Defendant Foot Locker, Inc. d/b/a Footaction and Champs Sports (hereinafter, "Foot Locker") is a New York corporation having a principal place of business at 330 West 34th Street, New York, New York 10001 ("FL HQ").

7. Defendant Foot Locker Retail, Inc. d/b/a Footaction and Champs Sports (hereinafter, "Foot Locker Retail") is a New York corporation having a principal place of business at 112 West 34th Street, New York, New York 10001.

8. Upon information and belief, Foot Locker is the parent company of Foot Locker Retail, and at all times relevant hereto, such a unity of interest and ownership exist between Foot Locker and Foot Locker Retail such that separate corporate personalities did not, and do not, in reality exist and thus, the tortious acts of one are attributable to the other.

9. Foot Locker and Foot Locker Retail are collectively hereinafter referred to as "FL Defendants".

10. Upon information and belief, Defendant H & C Headwear Inc. d/b/a KC

Caps and HeadShots by KC Caps (hereinafter, "H&C" or "H&C Defendant") is a California corporation having a principal place of business at 17145 Margay Avenue, Carson, California 90746, and five (5) other business locations, including a "New York-NJ office" located at 100 West Commercial Avenue, Moonachie, New Jersey 07074.

11. The FL Defendants and H&C Defendant are hereinafter collectively referred to as "Defendants".

COMMON FACTUAL ALLEGATIONS

Plaintiff and its Well-Known OG Products

12. Plaintiff, a well-known designer, manufacturer and distributor of the streetwear brand *Vandal-A Industries*®, is an independently owned apparel company established in 2006, which is best known as the source of a line of consumer apparel and accessories marketed and sold under the OG® brand ("OG Product(s)").

13. Vandal-A is the owner of all rights in and to the OG® brand, including U.S. Trademark Registration No. 4,986,203 for "OG" (stylized):

in International Class 025 for "[t]-shirts, long sleeved t-shirts, sweatpants, shorts, sweatshirts, hooded sweatshirts, jackets and headwear", with a date of first use in U.S. commerce of December 15, 2013 ("OG Registration" and "OG Mark", respectively). A true and correct copy of the OG Registration is attached hereto as **Exhibit A** and is incorporated herein by reference.

14. OG Products bearing the OG Mark are sold on Plaintiff's website, located at Vandal-A.com ("Plaintiff's Website") and via other fine retailers.

15. The OG Mark and OG Products have attracted a strong celebrity following, with renowned personalities like NY Giant wide receiver Victor Cruz and artists such as Fabolous and P. Diddy, and the like, having been photographed wearing OG Products bearing the OG Mark. Attached as **Exhibit B** are true and correct examples of images showing celebrities wearing the OG Products.

16. Plaintiff, its OG Mark and OG Products have also garnered significant press, including features on blogs, as well as extensive social media coverage. Attached as **Exhibit C** are true and correct representative samples of social media posts featuring the OG Mark and OG Products, as well as a true and correct screen shot of the press page of Plaintiff's Website.

17. As a result of Plaintiff's efforts, the quality of its OG Products, its promotions, and the word-of-mouth buzz that Plaintiff and its OG Mark and OG Products have generated, including via celebrities and social media, the OG Mark and OG Products have become prominently placed in the minds of the public. Members of the public have become familiar with the OG Mark and OG Products, and have come to recognize the OG Mark and OG Products and associate them exclusively with Plaintiff.

18. Plaintiff has acquired a valuable reputation and goodwill among the public as a result of such associations.

FL Defendants & the FL Stores

19. FL Defendants, an American sportswear and footwear retailer with their headquarters in New York City, own and/or operate athletic retail locations in 28 countries worldwide.

20. FL Defendants operate the "Foot Locker" chain of athletic footwear retail outlets (along with "Kids Foot Locker" and "Lady Foot Locker" stores), and other athletic-based divisions including Champs Sports, Footaction, House of Hoops, and Eastbay/Footlocker.com, which owns the rights to Final Score (collectively "FL Store(s)").

21. According to FL Defendants' filings with the SEC, as of January 28, 2017, FL Defendants had 3,363 primarily mall-based FL Stores in the United States, Canada, Europe, and Asia.

22. FL Defendants also operate a direct-to-consumer business through internet, mobile and catalog channels, which sells the same goods as the FL Stores.

Defendants' Wrongful and Infringing Conduct

23. In light of Plaintiff's success, and the success of its OG Mark and OG Products, as well as the reputation that they have gained, Plaintiff, its OG Mark and OG Products have become targets for unscrupulous individuals and entities who wish to take a free ride on the goodwill, reputation and fame Plaintiff has built up in its OG Mark and OG Products.

24. Plaintiff investigates and enforces against such activity, and through such efforts, learned of Defendants' actions, which vary, and include: manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling goods incorporating the OG Mark and/or a mark that is confusingly similar thereto.

25. More specifically, in June 2016, Plaintiff discovered that FL Defendants, through their Champs Sports division ("Champs"), were manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling hats utilizing an "OG" logo that is nearly identical to the OG Mark ("Unauthorized Product(s)").

Attached as **Exhibit D** is a true and correct photograph of an Unauthorized Product purchased by one of Plaintiff's representatives from a Champs FL Store, and a copy of the receipt for said purchase. A side-by-side comparison of one of Plaintiff's authentic OG Products to an Unauthorized Product, purchased from the Champs FL Store, appears below:

OG PRODUCT
UNAUTHORIZED PRODUCT
OG
OG

26. Consequently, Plaintiff sent a cease and desist letter to Champs on June 30, 2016, by hand delivery to the FL HQ in New York City, which was addressed to FL Defendants' General Counsel ("First Notice").

27. Despite the First Notice, approximately one month later, Plaintiff discovered that the Footaction division of FL Defendants ("Footaction") was also selling the same Unauthorized Products. Attached as **Exhibit E** is a true and correct photograph of an Unauthorized Product purchased by one of Plaintiff's representatives from a Footaction FL Store, and a copy of the receipt for said purchase.

28. Around the same time that Plaintiff learned of the Unauthorized Products being offered for sale and/or sold at Footaction (i.e., on or about August 2016), Plaintiff

discovered that the source of the Unauthorized Products was, upon information and belief, the H&C Defendant—a manufacturer of sportswear products.

29. Upon information and belief, the Unauthorized Products are manufactured, imported, exported, distributed, offered for sale and/or sold by the H&C Defendant. Below is the label appearing on the inside of one of the Unauthorized Products, which identifies "HeadShots by KC Caps", which is owned and/or operated by H&C Defendant, as the source:

authentic
by KC CAPS
one size fits most
100% cotton
HECHO EN CAMBODIA
100% Algodon

30. Plaintiff then sent cease and desist letters to Footaction (c/o FL Defendants) and H&C Defendant on August 26, 2016 ("H&C C&D"). At the same time, a second letter was sent to Champs at a Florida address.

31. To date, H&C Defendant has never responded to the H&C C&D.

32. On September 2, 2016, an in-house attorney for FL Defendants acknowledged receipt of the above-mentioned letters addressed to FL Defendants (collectively, "FL C&Ds"), and indicated that the matter was being looked into.

33. On September 30, 2016, outside counsel for FL Defendants issued a substantive response to the FL C&Ds on behalf of FL Defendants.

34. On or about October 10, 2016, outside counsel for FL Defendants

indicated that FL Defendants would pull the Unauthorized Products from their FL Stores.

35. Yet, in mid-November, 2016, Plaintiff discovered that Unauthorized Products were still being offered for sale and/or sold at certain FL Stores (specifically, at a minimum, at Footaction FL Stores in Getty Square, 6 S. Broadway, in Yonkers, NY and the East Brunswick Mall on Route 18, in East Brunswick, NJ).

36. On or about November 16, 2016, Plaintiff notified outside counsel for FL Defendants of FL Defendants' continued offering for sale and/or sale of Unauthorized Products.

37. On or about January 9, 2017, outside counsel for FL Defendants again confirmed that the Unauthorized Products had been removed from the FL Stores.

38. Despite this assurance, on January 11, 2017, Plaintiff once again uncovered that Unauthorized Products were being offered for sale and/or sold at certain FL Stores (specifically, at the very least, at the Footaction FL Store at the Cross County Mall, in Queens, NY).

39. Subsequently, settlement discussions continued among counsel for Plaintiff and FL Defendants over the next few months; however, on or about April 18, 2017, Plaintiff found out that Unauthorized Products were once again being offered for sale and/or sold at certain FL Stores located in Queens and the Bronx, NY, and as a result, all settlement discussions ceased. Attached as **Exhibit F** is a true and correct copy of a receipt for the purchase of Unauthorized Products from one of the FL Stores as late as April, 25, 2017.

40. Plaintiff has not consented to Defendants' use of Plaintiff's OG Mark.

41. Given Defendants' use of a mark that is nearly identical to, if not the same as, the OG Mark on Unauthorized Products, actual confusion has resulted among consumers,

potential consumers and retailers.

42. For example, social media posts on Instagram, among other media vehicles, depict consumers wearing Unauthorized Products, and mis-tag Vandal-A or celebrity Fabolous a/k/a "Young OG" (the *de-facto* face of the OG brand). Attached as **Exhibit G** are true and correct representative examples of such postings that evidence actual confusion.

43. Likewise, at least one employee and one manager from one of FL Defendants' FL Stores (specifically, Footaction) have indicated that consumers, when viewing and/or purchasing the Unauthorized Products, were under the impression that they were viewing and/or buying OG Products and/or that such Unauthorized Products emanate from Plaintiff. In fact, the manager was initially confused as well.

44. Similarly, Vandal-A has been advised of other instances of actual consumer confusion. Attached as **Exhibit H** are true and correct examples of messages that Vandal-A has received from consumers that further evidence such actual confusion.

45. In committing these infringing and illegal acts, as set forth herein, Defendants have, among other things, willfully and in bad faith committed the following, all of which have caused, and will continue to cause, irreparable harm to Plaintiff and its OG Mark: infringed and counterfeited Plaintiff's OG Mark, committed unfair competition, and unfairly and unjustly profited from such activities at Plaintiff's expense.

46. Unless enjoined, Defendants will continue to cause irreparable harm to Plaintiff.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Infringement of A Registered Trademark)
[15 U.S.C. §1114/Lanham Act §32(a)]

47. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

48. Plaintiff has continuously used its OG Mark in interstate commerce since at least as early as 2013.

49. Plaintiff, as the owner of all right, title and interest in and to the OG Mark, has standing to maintain an action for trademark infringement under the Lanham Act, 15 U.S.C. §1114.

50. Defendants are and, at the time of their actions complained of herein, were, actually aware that Plaintiff is the registered trademark holder of the OG Mark.

51. Defendants did not seek and failed to obtain the consent or authorization of Plaintiff, as the registered owner of the OG Mark, to deal in and commercially manufacture, import, export, advertise, market, promote, distribute, display, offer for sale and/or sell goods bearing the OG Mark into the stream of commerce.

52. Defendants intentionally and knowingly used in commerce reproductions, copies, and/or colorable imitations of Plaintiff's OG Mark on or in connection with their manufacturing, importation, exportation, advertisement, marketing, promotion, distribution, display, offering for sale and/ sale of Defendant's goods (i.e., Defendants' Unauthorized Products).

53. Upon information and belief, Defendants reproduced, copied, and colorably imitated Plaintiff's OG Mark and applied such reproductions, copies, or colorable imitations to labels, signs, prints, packages, wrappers, receptacles and/or advertisements intended to be used in commerce upon or in connection with the manufacturing, importation,

exportation, advertisement, marketing, promotion, distribution, display, offering for sale and/ sale of Defendants' Unauthorized Products.

54. Defendants thereupon manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale and/or sold Unauthorized Products bearing Plaintiff's OG Mark and/or utilizing a mark that is a reproduction, counterfeit, copy and/or colorable imitation of the OG Mark and/or which is identical or confusingly similar to the OG Mark.

55. Defendants' egregious and intentional use of the OG Mark and sale of Unauthorized Products bearing Plaintiff's OG Mark, a colorable imitation of Plaintiff's OG Mark, or a mark that is confusingly similar thereto, has caused actual confusion, and is likely to continue to cause further confusion, or to cause mistake, or to deceive, mislead, betray, and defraud consumers into believing that Defendants' Unauthorized Products are authentic OG Products that are manufactured with Plaintiff's consent or otherwise associated with Plaintiff.

56. Defendants' actions have been committed with knowledge of Plaintiff's exclusive rights and goodwill in the OG Mark, as well as with bad faith and the intent to cause confusion or to cause mistake and to deceive.

57. Defendants' continued , knowing and intentional use of Plaintiff's OG Mark without Plaintiff's consent or authorization constitutes intentional infringement of Plaintiff's federally registered OG Mark in violation of §32 of the Lanham Act, 15 U.S.C. § 1114.

58. As a direct and proximate result of Defendants' unlawful and infringing actions as alleged herein, Plaintiff has suffered, and will continue to suffer, substantial and irreparable injury, loss and damage to its rights in and to the OG Mark and the goodwill

associated therewith, for which it has no adequate remedy at law; therefore, Plaintiff is entitled to injunctive relief.

59. Based on Defendants' conduct, Plaintiff is not only entitled to injunctive relief, but also monetary damages, and other remedies provided by 15 U.S.C. §§ 1116, 1117, and 1118, including Defendants' profits, treble damages, reasonable attorneys' fees, costs and prejudgment interest.

SECOND CAUSE OF ACTION
(Trademark Counterfeiting Under Sections 32, 34, and 35 of the Lanham Act, 15 U.S.C. §§ 1114(1)(b), 1116(d), and 1117(b)-(c))

60. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

61. Without Plaintiff's authorization or consent, and with knowledge of Plaintiff's well known and prior rights in its OG Mark, and with knowledge that their Unauthorized Products bear counterfeit marks, which are intentional reproductions, copies, and/or colorable imitations of Plaintiff's OG Mark or display spurious designations that are identical with, or substantially indistinguishable from, Plaintiff's OG Mark, Defendants have manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, retailed, offered for sale and/or sold Unauthorized Products to the purchasing public in direct competition with Plaintiff, in or affecting interstate commerce.

62. Upon information and belief, Defendants have applied their reproductions, counterfeits, copies, and colorable imitations of Plaintiff's OG Mark to packaging, labels, point-of-purchase images and advertisements intended to be used in commerce upon, or in connection with, the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, retailing, offering for sale, and/or sale of

Defendants' Unauthorized Products, which is likely to cause confusion, mistake, and deception among the general purchasing public as to the origin of the Unauthorized Products, and is likely to deceive consumers, the public and the trade into believing that the Unauthorized Products sold by Defendants originate from, are associated with or are otherwise authorized by Plaintiff, thereby making substantial profits and gains to which they are not entitled in law or equity.

63. Defendants' unauthorized use of Plaintiff's OG Mark on or in connection with the Unauthorized Products was done with notice and full knowledge that such use was not authorized or licensed by Plaintiff or its authorized agents and with the deliberate intention to unfairly benefit from the incalculable goodwill inherent in Plaintiff's OG Mark.

64. Defendants' actions constitute willful counterfeiting of Plaintiff's OG Mark in violation of 15 U.S.C. §§ 1114(1)(a)-(b), 1116(d), and 1117(b)-(c).

65. As a direct and proximate result of Defendants' actions alleged herein, Defendants have caused substantial and irreparable injury and damage to Plaintiff and its valuable OG Mark for which Plaintiff has no adequate remedy at law, and unless immediately enjoined, Defendants will continue to cause damage to Plaintiff and its valuable OG Mark in an amount as yet unknown but to be determined at trial.

66. Based on the foregoing, Plaintiff is entitled to injunctive relief, damages that Plaintiff has sustained and will sustain as a result of Defendants' unlawful and infringing actions as alleged herein, and all gains, profits and advantages obtained by Defendants as a result thereof, enhanced discretionary damages, treble damages, and/or statutory damages of up to $2,000,000 per counterfeit mark per type of goods sold, offered for sale, or distributed and reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION
(False Designation of Origin, Passing Off & Unfair Competition)
[15 U.S.C. §1125(a)/Lanham Act §43(a)]

67. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

68. Plaintiff has standing to maintain an action for false designation of origin and unfair competition under the Lanham Act §43(a), 15 U.S.C. §1125.

69. Plaintiff's OG Mark is inherently distinctive and/or has acquired distinctiveness.

70. Defendants knowingly and willfully used in commerce a mark that is identical or confusingly similar to and constitutes a reproduction of Plaintiff's OG Mark and affixed, applied and used false designations of origin and false and misleading descriptions and representations on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, and/or sale of the Unauthorized Products with the intent to cause confusion, to cause mistake and to deceive the purchasing public to believe, in error, that Defendants' substandard Unauthorized Products are authorized, sponsored, approved endorsed or licensed by Plaintiff, and/or that Defendants are affiliated, connected or associated with Plaintiff, thereby creating a likelihood of confusion by consumers as to the source of the Unauthorized Products, and allowing Defendants to capitalize on the goodwill associated with, and the consumer recognition of, Plaintiff's OG Mark, to Defendants' substantial profit in blatant disregard of Plaintiff's rights.

71. By manufacturing, importing, exporting and/or assisting and/or encouraging third parties to manufacture, import, export and by themselves advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise

dealing in the Unauthorized Products, which are identical to, confusingly similar to or colorable imitations of Plaintiff's OG Products, using a mark that is confusingly similar to, or which constitutes a colorable imitation of Plaintiff's OG Mark, Defendants have traded off the extensive goodwill of Plaintiff and its OG Mark to induce, and have induced, and intends and will continue to induce customers to purchase their Unauthorized Products, thereby directly and unfairly competing with Plaintiff. Such actions have permitted, and will continue to permit Defendants to make substantial sales and profits based on the goodwill and reputation of Plaintiff that it has amassed through its marketing, advertising, sales and consumer recognition.

72. Defendants knew, or by the exercise of reasonable care should have known, that their adoption and commencement of and continuing use in commerce of a mark that is identical or confusingly similar to and/or constitutes a reproduction of Plaintiff's OG Mark would cause confusion, mistake, or deception among purchasers, users and the public.

73. Upon information and belief, Defendants' aforementioned wrongful actions have been knowing, deliberate, willful, intended to cause confusion, to cause mistake and to deceive the purchasing public and with the intent to trade on the goodwill and reputation of Plaintiff, its OG Mark and OG Products.

74. As a direct and proximate result of Defendants' aforementioned actions, Defendants have caused irreparable injury to Plaintiff by depriving Plaintiff of sales of its OG Products and by depriving Plaintiff of the value of its OG Mark as a commercial asset, for which it has no adequate remedy at law, and unless immediately restrained, Defendants will continue to cause substantial and irreparable injury to Plaintiff and the goodwill and reputation associated with Plaintiff's OG Mark in an amount as yet unknown, but to be determined at trial.

75. Based on Defendants' wrongful conduct, Plaintiff is entitled to injunctive relief, as well as monetary damages and other remedies as provided by the Lanham Act, including damages that Plaintiff has sustained and will sustain as a result of Defendants' unlawful and infringing actions as alleged herein, and all gains, profits and advantages obtained by Defendants as a result thereof, enhanced discretionary damages and reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION
(Violation of Deceptive Trade Practices Act – N.Y. Gen. Bus. Law § 349)

76. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

77. Through Defendants' unlawful, unauthorized, and unlicensed use of Plaintiff's OG Mark in order to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Unauthorized Products, which are identical and/or confusingly similar to Plaintiff's OG Products, Defendants have engaged in consumer-oriented conduct that has adversely affected the public interest and has resulted in injury to consumers in New York.

78. Defendants' aforementioned conduct was, and is, a willful and deliberate attempt to mislead consumers and constitutes the use of deceptive acts or practices in the conduct of business, trade or commerce. Such conduct has deceived and materially misleads, or has a tendency to deceive and materially mislead the consuming public and has injured, and will continue to injure Plaintiff's business, reputation and goodwill in violation of N.Y. Gen, Bus. Law § 349.

79. As a result of Defendants' actions alleged herein, Plaintiff has suffered, and will continue to suffer irreparable harm for which it has no adequate remedy at law.

80. Pursuant to N.Y. Gen. Bus. Law. § 349(h), Plaintiff is entitled to enjoin Defendants' unlawful conduct as well as obtain damages in an amount to be determined at trial, costs, disbursements and attorneys' fees.

FIFTH CAUSE OF ACTION
(False Advertising - N.Y. Gen. Bus. Law § 350)

81. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

82. Without the authorization of Plaintiff, Defendants have used Plaintiff's OG Mark and/or a mark and/or design that is identical and/or confusingly similar to Plaintiff's OG Mark to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Unauthorized Products, which are identical and/or confusingly similar to Plaintiff's OG Products, thereby causing confusion, mistake and deceiving consumers and the public as to the source, origin, sponsorship, or quality of Defendants' Unauthorized Products.

83. Defendants' aforementioned willful and intentional actions constitute false advertising in the conduct of any business, trade or commerce and have injured, and will continue to injure Plaintiff's business, reputation and goodwill in violation of N.Y. Gen. Bus. Law § 350.

84. As a result of Defendants' actions alleged herein, Plaintiff has suffered, and will continue to suffer irreparable harm for which it has no adequate remedy at law.

85. Pursuant to N.Y. Gen. Bus. Law. § 350(e), Plaintiff is entitled to enjoin Defendants' unlawful conduct as well as obtain damages in an amount to be determined at trial, costs, disbursements and attorneys' fees.

SIXTH CAUSE OF ACTION
(Unfair Competition)
[New York Common Law]

86. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

87. By manufacturing, importing, exporting and/or assisting and encouraging third parties to manufacture, import, export and/or by themselves advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Unauthorized Products, Defendants have traded off the extensive goodwill of Plaintiff and its OG Mark to induce, and have induced, and intend and will continue to induce customers to purchase their Unauthorized Products, thereby directly competing with Plaintiff. Such actions have permitted, and will continue to permit Defendants to make substantial sales and profits based on the goodwill and reputation of Plaintiff, which it has amassed through its international marketing, advertising, sales and consumer recognition.

88. Defendants' advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Unauthorized Products was, and is, in violation and derogation of Plaintiff's rights and is likely to cause confusion, cause mistake and to deceive consumers and the public as to the source, origin, sponsorship, or quality of Defendants' Unauthorized Products.

89. Defendants knew or, by the exercise of reasonable care, should have known, that their advertising, marketing, promoting, distributing, displaying, offering for sale,

selling and/or otherwise dealing in the Unauthorized Products and their continuing advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Unauthorized Products would cause confusion, cause mistake or deceive purchasers, users and the public.

90. Upon information and belief, Defendants' aforementioned wrongful actions have been knowing, deliberate, willful, intended to cause confusion, to cause mistake and to deceive, in blatant disregard of Plaintiff's rights, and for the wrongful purpose of injuring Plaintiff and its competitive position while benefiting Defendants.

91. As a direct and proximate result of Defendants' aforementioned wrongful actions, Plaintiff has been, and will continue to be, deprived of substantial sales of its OG Products in an amount as yet unknown but to be determined at trial, and Plaintiff has been, and will continue to be deprived of the value of its OG Mark as a commercial asset, in an amount as yet unknown but to be determined at trial.

92. Plaintiff has no adequate remedy at law for Defendants' continuing violation of its rights set forth above. Plaintiff seeks injunctive relief, an order granting Plaintiff's damages and Defendants' profits stemming from their infringing activities, and exemplary or punitive damages for Defendants' intentional misconduct.

SEVENTH CAUSE OF ACTION
(Unjust Enrichment)

93. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs.

94. By virtue of the egregious and illegal acts of Defendants as described above, Defendants have been unjustly enriched in an amount to proven at trial.

95. Defendants' retention of monies gained through their deceptive business practices, infringement, acts of deceit and otherwise would serve to unjustly enrich Defendants and would be contrary to the interests of justice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, inclusive, and each of them, as follows:

A. For an award of Defendants' profits and Plaintiff's damages in an amount to be proven at trial for willful trademark infringement of its federally registered OG Mark, and such other compensatory damages as the Court determines to be fair and appropriate pursuant to 15 U.S.C. § 1117(a);

B. For an award of Defendants' profits and Plaintiff's damages pursuant to 15 U.S.C. § 1117(a), enhanced discretionary damages under 15 U.S.C. § 1117(a), and treble damages in the amount of a sum equal to three (3) times such profits or damages, whichever is greater, pursuant to 15 U.S.C. § 1117(b) for willfully and intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark in violation of 15 U.S.C. § 1114(1)(a);

C. In the alternative to Defendants' profits and Plaintiff's actual damages, enhanced discretionary damages and treble damages for willful use of a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, for statutory damages pursuant to 15 U.S.C. § 1117(c) in the amount of not more than $2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the Court considers just, which Plaintiff may elect prior to the rendering of final judgment;.

D. For an award of Defendants' profits and Plaintiff's damages pursuant to 15 U.S.C. § 1117(a) in an amount to be proven at trial and such other compensatory damages as the Court determines to be fair and appropriate for false designation of origin and unfair competition under 15 U.S.C. §1125(a);

E. For an award of damages in an amount to be proven at trial for deceptive acts and practices pursuant to N.Y. Gen. Bus. Law. § 349(h);

F. For an award of damages to be proven at trial for false advertising pursuant to N.Y. Gen. Bus. Law. § 350(e);

G. For an award of damages to be proven at trial for common law unfair competition;

H. For an award of damages in an amount to be proven at trial for unjust enrichment;

I. For a preliminary and permanent injunction by this Court enjoining and prohibiting Defendants, or their agents, and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by Defendants, and all those in active concert or participation with Defendants, and each of them who receives notice directly or otherwise of such injunction from:

i. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Unauthorized Products;

ii. directly or indirectly infringing in any manner any of Plaintiff's exclusive rights (whether now in existence or hereafter created) including, without limitation, Plaintiff's OG Mark;

iii. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's trademarks or other exclusive rights (whether now in existence or hereafter created) including, without limitation, Plaintiff's OG Mark, to identify any goods or services not authorized by Plaintiff;

iv. using any of Plaintiff's trademarks or other exclusive rights (whether now in existence or hereafter created) including, without limitation, Plaintiff's OG Mark, or any other marks or artwork that are confusingly similar to Plaintiff's OG Mark on or in connection with Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Unauthorized Products;

v. using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale, or sold by Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale, or sold by Defendants and Defendants' commercial activities by Plaintiff.

vi. engaging in the unlawful, unfair, or fraudulent business acts or practices, including, without limitation, the actions described herein, including the advertising and/or dealing in any Unauthorized Products;

vii. engaging in any other actions that constitute unfair competition with Plaintiff;

viii. engaging in any other act in derogation of Plaintiff's rights;

ix. secreting, destroying, altering, removing, or otherwise dealing with the Unauthorized Products or any books or records that contain any information relating to manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Unauthorized Products;

x. effecting assignments or transfers, forming new entities or associations, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in any Final Judgment or Order in this action; and

xi. instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (x) above; and

J. For an order of the Court requiring that Defendants recall from any distributors and retailers and deliver up to Plaintiff for destruction any and all Unauthorized Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of such distributors and retailers that infringe any of Plaintiff's trademarks or other exclusive rights including, without limitation, Plaintiff's OG Mark, or bear any marks or artwork that are confusingly similar to Plaintiff's OG Mark;

K. For an order of the court requiring that Defendants deliver up for destruction to Plaintiff any and all Unauthorized Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defendants that infringe any of Plaintiff's trademarks or other exclusive rights including, without limitation, Plaintiff's OG Mark, or bear any marks or artwork that are confusingly similar to Plaintiff's OG Mark pursuant to 15 U.S.C. § 1118.

L. For an order from the Court requiring that Defendants provide complete accountings for any and all monies, profits, gains and advantages derived by Defendants from their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, sale and/or otherwise dealing in the Unauthorized Products as described herein, including prejudgment interest.

M. For an order from the Court that an asset freeze or constructive trust be imposed over any and all monies, profits, gains and advantages in Defendants' possession which rightfully belong to Plaintiff;

N. For an award of exemplary or punitive damages in an amount to be determined by the Court;

O. For Plaintiff's reasonable attorneys' fees;

P. For all costs of suit; and

Q. For such other and further relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury in this action.

Dated: June 8, 2017

EPSTEIN DRANGEL, LLP

By: /s/ Jason M. Drangel

Jason M. Drangel (JD 7204)
jdrangel@ipcounselors.com
Ashly E. Sands (AS 7715)
asands@ipcounselors.com
Kerry B. Brownlee (KB 0823)
kbrownlee@ipcounselors.com

60 East 42nd Street, Suite 2520
New York, NY 10165
Tel: 212-292-5390
Fax: 212-292-5391